SHRI KAMAL MORARKA: Madam, we have Malaviyaji who wants to ask a question from Mr. Bhardwaj and the CPM friend wants to ask a question from the Home Minister. Let them ask one question each and close the matter.

उपसभापति : भारद्वाज जी, आपका सवाल करा देते हैं । मालवीय जी, आप बोल दीजिए । एक सवाल वह कर देते हैं, बात खत्म हो जाएगी । उसके बाद,

I will ask the Minister, Mr. Faleiro, to move the motion but the discussion on the Drug Policy will take place only tomorrow because we have to have four hours for it and we can get it moved only.

SHRI JAGMOHAN: Madam, I would also like to ask one question.

उपसभापति : ठीक है, आप भी पूछ लीजिए । जरा संक्षेप में सब लोग पूछ लें, तो संक्षेप में जवाब आएगा । बोलिए, आप बोलिए । पहले भारद्वाज जी से पूछ लीजिए ।

CLARIFICATIONS ON THE STATEMENT BY MINISTER

The Order dated the 2nd August, 1993 of the Chief Election Commissioner

SHRI SATYA PRAKASH MALAVIYA (Uttar Pradesh): Madam Deputy Chairman, the Election Commission passed an order on 2nd August, 1993. That order may be good, bad or unconstitutional. I am not concerned with that. But he has stated certain facts that he met the Prime Minister first on the 2nd of May, 1993 and then he again met the Prime Minister on 21st July, 1993. During the intervening period, he wrote three letters to the Prime Minister. The first one was written on 14th May, 1993, the second one was written on 14th June, 1993 and the third one was written on 16th/19th July, 1993 and I quote from the last letter that was written on 16th/19th July, 1993. I quote: "Dear Mr. Prime Minister, kindly refer to my reminder letter dated June 14, 1993 (copy enclosed) regarding the interpretation of Article 324(6) etc. conveyed in the Cabinet Secretary's letter dated 5th of May, 1993. You will also kindly recall that I had discussed this matter with you on more than one occasion on telephone. More than two months have elapsed and no decision from the Government is available. The Election Commission is convinced that it is just not possible to accept the position stated by the Cabinet Secretary in his letter 5th May, 1993 and hold elections."

उपसभापति : मालवीय जी, वह तो उन्होंने पढ़ा ही होगा । वह तो उनके पास गया ही है । आप खाली पेज रैफर कर दीजिए ।

SHRI SATYA PRAKASH MALAVIYA: Madam, I am only referring to one letter. There were three letters. "The Commission is, therefore, being compelled to place the matter before a court of appropriate jurisdiction for a decision. I thought it only correct that I should keep you informed." The Chief Election Commissioner first met the Prime Minister on 7th of May and then wrote this letter on 16th July, that is, there was an intervening period of about three months. What prevented the Government from taking a decision on the points raised by the Election Commission? This is number one. My assumption is, had the Government taken some decision or replied to the letter written by the Election Commission, the Election Commission might have been prevented from passing the order which was passed on the 2nd August, 1993. Secondly, there is a provision under the Constitution for a multi-member Election Commission. The provision is not mandatory and it is only optional. I would request the Law Minister to also consider bringing a comprehensive Bill on electoral reforms and making the provision of the multi-member Election Commission a mandatory provision and not a formal provision. Secondly, we should think about the mode of appointment of the Election Commissioner and also the mode of his removal and bring some amendment to that effect.

SHRI JAGMOHAN (Nominated): Madam, my question is in two parts. The first part is: Do you think that it is really an issue of constitutional maturity and constitutional morality? Technical powers are one thing and exercise of those powers in a mature manner is another thing. Do you think that the manner in which the Chief Election Commissioner has acted is a sufficiently constitutionally mature manner? How much does his erratic decision—changing the decision is one thing; first set the machinery in motion, then stop it and again set the machinery in motion—cost this poor nation? Has anybody made any calculation about the costs involved in this behaviour? In a specific area if something has gone wrong, he has always the power to annual the polling in that specific area. How can he do it in all the elections, the State Assembly elections, the State Council elections and the Rajya Sabha elections? I fail to understand it. There is no justification for this. The second point is that if the

Government is having a view and he is having a view different from that, don't set the machinery in motion. There may be some delay on the part of the Government but there is nothing wrong in it. When the Home Secretay wrote to him about the opinion of the Attorney General, he said, "It is all pedantic." He does not give any reasons for saying that he doesn't agree. He gives the impressions that when he speaks, nobody else should speak anything. I think it is a very serious matter for a poor country. He fails to distinguish between the constitutional power which he has and the administrative machinery which is at the disposal of the Government which enforces that constitutional authority. He is not an executor. He can pass an order. The execution has to be done by somebody else. Tomorrow the High Court or the Supreme Court may say, "We require a specific police officer. Unless we are given that officer we will see to it that our order is not passed." This is not the proper attitude. So far as Tamil Nadu is concerned, what is the difficulty? If he wants seven companies or nine companies of forces, one can settle it with him. Whatever he wants, 10 companies or 15 companies, let the Government give him and let the elections be held. What is the difficulty? Satisfy him with 25 companies or 30 companies of the forces. It is not one by-election that is taking place. Different elections are taking place all over the country. Let him say that he requires forces for being deployed, at many places. Why doesn't he straightway say, "Give me 10 companies or 15 companies of the forces"? Let him take it and hold the elections.

SHRI MOTURU HANUMANTHA RAO (Andhra Pradesh): I think we are living in a magic world because all of a sudden at the whims and fancies of a particular individual, who is sitting there as EC, the elections have been postponed. The entire country became angry; all the parties became angry and the entire press became angry. A response came from the ruling party that somthing would have to be done and they would come forward with certain suggestions. The suggestion was that a multi-member Election Commission must be there. Impeachment was also thought about. They had reacted to all these and they had promised to come forward within two or three days with some action. In the meanwhile, something has happened. Some shady business is going on, I don't know. At the instance of the Supreme Court, he has given up the powers all of a sudden and our hon. Law Minister comes forward simply stating that whatever has happened, as if nothing wrong has been committed. Now he says, "We will go ahead." This is a magic world. That is what I feel. It is an absurd thing. We must act; otherwise, what is the meaning? A multi-member Election Commission should be there. The ruling party must seize this suggestion and they should come forward with some report. That is my request to the Law Minister. Let him explain why he has put off everything.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. BHARDWAJ): Madam, Shri Satya Prakash Malaviya has mentioned about some correspondence with the Chief Election Commissioner. Whenever the Chief Election Commissioner reported to the Government, the Cabinet Secretary, who was in correspondence with him replied back and pointed out that we have obtained the opinion of the highest law officer of the land, the Attorney-General. We apprised the CEC about the position which the Attorney-General explained. So far as his correspondence is concerned, two points were raised by him. One was about the deployment of forces, paramilitary forces and other forces in States and the second point was with regard to the desciplinary jurisdiction of the Chief Election Commissioner over the officers of the state in the election.

SHRI MOTURU HANUMANTHA RAO: Madam, the Minister is simply repeating the points. What action has he taken?

श्री हंसराज भारद्वाज : अब आप सुनिए तो सही । प्लीज, आप बैठ जाइए, आपने दो बात कह तो दीं । . . . **(व्यवधान)**

THE DEPUTY CHAIRMAN: Let him finish.

SHRI H. R. BHARDWAJ: Let me speak. We want to be very serious about it. I am replying to it. So, these two points were raised. You will appreciate that there is a quasi-federal structure in the country. The State Governments Loan officers to the CEC under the scheme of the Constitution. The Governor and the President have to give the facility of officers and staff to the CEC. Nobody denies that jurisdiction, nobody denies that power of the Chief Election Commissioner that he is entitled to ask for staff and he can use it. But the question is with regard to the real disciplinary authority. The view of the Attorney-General was that it was not in the strict sense, a deputation. According to Articles 309 and 311 of the Constitution, the jurisdiction of discipline and disciplinary authority still

remains with the state. Therefore, this area was a little grey area for the views expressed by the Chief Election Commissioner. We wanted to tell him what the Attorney-General advised. Unfortunately, he did not seem to agree with that proposition and the legal opinion of the Attorney-General. His second point was about the deployment of paramilitary forces. Whatever forces the Chief Election Commissioner desires, have to be given. We simultaneously route the forces through the State Government. Whenever elections are held, forces are made available by the State Government. Thereafter the Chief Election Commissioner assesses whether those forces are adequate to look after the law and order situation. Law and order and public order are State subjects and police also is a state subject. Therefore, we have to definitely consult every State Government. If you ignore the State Government then who is responsible for the law and order situation? With that end in view we had to talk to the West Bengal Government. We asked "What are you doing? How much forces have been requisitioned by the Chief Election Commissioner?" If the Chief Election Commissioner wants seven companies or 10 companies then there is no difficulty. There is a system by which we have been conducting elections for the last 40 years. There has never been any let-up. Whenever a constitutional functionary functions in a spirit of harmony and cooperation, there is no difficulty. In this particular case, the Tamil Nadu Government wanted seven companies The Ministry of Home affairs informed them that we are sending seven companies. If more companies were needed, they should have specifically told us. But the question is of the quantum of forces required. It has to be assessed by the Chief Election Commissioner in consultation with the concerned State Government. I don't think any Member can object saying that we need not consult the State Government. The State Government is at the spot and they are in charge of law and order. We have to consult them. The Chief Election Commissioner also has to look into the views of the State Government.

So, this is certainly not an area on which you can just put the entire democratic process at nought. These views were conveyed to the Chief Election Commissioner. It was really unfortunate that he resorted to such an action.

Now, the Supreme Court has been seized of this matter. Now, this particular interpretation of section 13cc will have to be interpreted by the Court because we wanted that interpretation. Now that it is there, the Supreme Court has issued notices to all Advocate-General. Once this matter is decided finally, if the view point of the Election Commission is upheld by the Court, everybody will have to be bound by that. But certainly whatever views we had, we had conveyed to him and there was a difference of opinion, a genuine difference of opinion, not something to do with prestige. We don't stand on any false prestige at all. We are prepared to co-operate because nobody can deny this aspect : that the primary duty to hold a free and fair election is that of the election Commission under the plenary powers given to it by the constitution. Therefore, with this view, we are prepared to co-operate. But there are some areas which we face. I hope that in right earnest if this issue is decided, everybody will feel that all the constitutional functionaries involved in the election process work in a spirit of co-operation and harmony, understanding each other's point of view. Unless this is done, the very stupendous task to holding fair and free elections cannot be achieved. No one functionary is sufficient to deal with the situation. The Central Government and the Election Commission jointly can do this. Therefore, his attitude of confrontation does not help anybody. It has brought a very bad name to all of us. I also take the blame because I am the Minister in charge of the Election Department. But the question is, it should go deep into the mind of everybody that you cannot really go against the constitutional scheme. We should work within our defined areas. That is what the Supreme Court has asked. So far as elections are concerned, holding of fair and free elections is one area. So far as this area is concerned, they have said there is a point in what we have expressed end that has to be decided. This could be managed in a much better way. I only inform the House that I could certainly not do anything once an order is passed by the Election Commission. Now he has made a petition himself under article 32 asking for a declaration. Therefore, once you ask for a declaration...*(Interruption)*...

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu) : What concrete action has been taken to settle this issue? That you please tell us.

SHRI H. R. BHARDWAJ : There is a controversy. It is only to be sorted out by the courts. There is nothing else. You cannot start another controversy on this. The only civilised method is to have it decided by a court of law and the highest court of the land is seized of this matter. What else could be done? The house can again

discuss this issue. You can bring in another motion to discuss electoral reforms or anything. We are prepared to discuss. But he says the statute gives him much wider power we say 'no', these powers are not that wider as you assume them to be. Then, who has to decide ? It is the Supreme Court. Now the Supreme Court is seized of this matter and has given advice to the Election Commission not to hold up elections. Fortunately, these things are being straightened up. Let us not worsen it more because it is a matter *sub judice*.

———

CLARIFICATIONS ON THE STATEMENT BY MINISTER

Police Firing in Calcutta on the 21st July, 1993

THE DEPUTY CHAIRMAN : Now, who wants to ask clarifications on this ?

SHRI SANGH PRIYA GAUTAM (Uttar Pradesh) : Madam, Let us discuss it tomorrow.

THE DEPUTY CHAIRMAN : No, we cannot postpone it. Let us finish it today itself. Only one quesion I will allow.

श्री संघ प्रिय गौतम : हम भी पूछेंगे ।

उपसभापति : आज ही ।

I will also allow you one question. Let him finish.

श्री मोहम्मद अमीन (पश्चिमी बंगाल) : मैडम, 21 जुलाई को कलकत्ता में पुलीस की जो फायरिंग हुई, उस सिलसिले में होम मिनिस्टर साहब ने इस ऐवान में जो बयान दिया था, उसको पढ़ने के बाद मुझे ऐसा लगा कि इस बयान में स्टेट गवर्नमेंट जो कुछ कहना चाहती है, उसके लिए कोई जगह नहीं है और यूथ कांग्रेस की तरफ से जो बयान दिया गया है उसीको होम मिनिस्टर साहब ने यहां दोहरा दिया है । पुलिस की गोली से किसी की मौत हो जाए, यह कोई अच्छी बात नहीं है, इसके बारे में दो रायें हीं हो सकती और यकीनन 21 जुलाई को जो पुलिस की फायरिंग हुई, वह अफसोसनाक बात हुई । लेकिन होम मिनिस्टर साहब ने अपने बयान में यह नहीं बताया कि पुलिस को किन हालात में वह गोली चलानी पड़ी ? जब रास्ता बंद कर दिया जाए, पुलिस के ऊपर पत्थर फैंके जाएं, बम मारे जाएं और पाइप गन से गोलियां चलाई जाएं, उस हालत में पुलिस को क्या करना चाहिए ? यह सवाल है जिसका जवाब मंत्री महोदय हमको दें ?

दूसरा, यह है कि जब इस किस्म की वारदात किसी ऐसी रियासत में होती है जहां हुकूमत कांग्रेस की होती है तो बयान एक किस्म का आता है और जहां हुकूमत अपोजिशन पार्टियों की होती है तो बयान दूसरी किस्म का आ जाता है । यह इम्तयाज क्यों ? अभी आंध्र प्रदेश में कुछ दिनों पहले एक एम० एल० ए० का मर्डर हो गया । उस वक्त यह सुना गया था कि यह लॉ एंड आर्डर स्टेट सब्जेक्ट है । अभी-अभी भारद्वाज साहब ने भी इसी बात को दोहराया । लेकिन कलकत्ता को जब पुलिस फायरिंग हुई, तो उसको स्टेट का लॉ एंड आर्डर क्यों नहीं करार दिया गया ? चीफ मिनिस्टर साहब से होम मिनिस्टर साहब की क्या बातें हुई, वह तो बयान नहीं किया गया, बल्कि कलकत्ते में उन्होंने एक बयान यह भी दिया था कि जुडिशियल इंक्वायरी करना चाहें तो हम मरकज़ी गवर्नमेंट की तरफ से करा सकते हैं, लेकिन बेहतर यह होगा कि स्टेट गवर्नमेंट जुडिशियल इंक्वायरी कराए । मेरे ख्याल में यह बात बोलना भी मुनासिब नहीं है । ऐसे मामलात में जुडिशियल इंक्वायरी का फैसला स्टेट गवर्नमेंट करती है और स्टेट गवर्नमेंट ने बहुत साफ तरीके से कह दिया है कि इसमें जुडिशियल इंक्वायरी की कोई जरूरत नहीं है । उसके ऊपर होम मिनिस्टर साहब का यह बयान रियासत के मामले में मुदाखलते बेजा है और इससे सेंटर-स्टेट रिलेशंस के और बिगड़ने का इंकाम बढ़ जाता है । इसलिए इससे परहेज करना चाहिए । होम मिनिस्टर साहब, मेहरबानी करके यह बताएं कि उन्होंने जो बयान दिया है उससे बंगाल में और कलकत्ता में यूथ कांग्रेस के उन लोगों की हौसला अफजाई होती है, जो कानून तोड़ते हैं और ऐसी सरगरमियों में मुलव्विस रहते हैं जिससे कलकत्ता का अमनो-आमन बरबाद होता है । बंगाल में कांग्रेस को बचाने का यह रास्ता नहीं है । अगर बंगाल में कांग्रेस और यूथ कांग्रेस को बचाना चाहते हैं तो जो गैर-जिम्मेदाराना हरकतें होती है उनको कंडम करना चाहिए और उनको भी अमन बरकरार रखने में उनका ताबुन मिले, इस बात की हिदायत देनी चाहिए । आंखे बंद करके इस तरह सपोर्ट करके कांग्रेस पार्टी बंगाल में बच नहीं सकती । वह डूब रही और डूब जाएगी ।

†[شری محمد امین "پشچمی بنگال" : میڈم ۲۱ر جولائی کو کلکتہ میں پولیس کی جو فائرنگ ہوئی اس سلسلے میں ہوم منسٹر صاحب نے جو بیان اس ایوان میں دیا تھا اس کو پڑھنے کے بعد مجھے ایسا لگا کہ اس بیان میں اسٹیٹ گورنمنٹ جو کچھ کہنا چاہتی ہے اس کے لئے کوئی جگہ نہیں ہے اور یوتھ کانگریس کی طرف سے جو بیان دیا گیا ہے اسی کو ہوم منسٹر

† [ ] Transliteration in Arabic Script.